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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/620,578	07/17/2003	W. Gregg Sterling	307-101P-WLK	8854
7590	10/19/2004		EXAMINER	
Law Offices of William L. Klima, P.L.C. P.O. Box 2855 Stafford, VA 22555-2855				SMITH, JAMES G
		ART UNIT		PAPER NUMBER
		3765		

DATE MAILED: 10/19/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary	Application No.	Applicant(s)	
	10/620,578	STERLING ET AL.	
	Examiner	Art Unit	
	James G Smith	3765	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) Responsive to communication(s) filed on 12 November 2003.
- 2a) This action is FINAL. 2b) This action is non-final.
- 3) Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) Claim(s) 1-22 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) Claim(s) _____ is/are allowed.
- 6) Claim(s) 1-17 19-22 is/are rejected.
- 7) Claim(s) 18 is/are objected to.
- 8) Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) The specification is objected to by the Examiner.
- 10) The drawing(s) filed on 12 November 2003 is/are: a) accepted or b) objected to by the Examiner. Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a). Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
 - a) All
 - b) Some *
 - c) None of:
 1. Certified copies of the priority documents have been received.
 2. Certified copies of the priority documents have been received in Application No. _____.
 3. Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)	4) <input type="checkbox"/> Interview Summary (PTO-413)
2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)	Paper No(s)/Mail Date. _____.
3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)	5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152)
Paper No(s)/Mail Date _____.	6) <input type="checkbox"/> Other: _____.

DETAILED ACTION

Claim Rejections - 35 USC § 102

1. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

2. Claims 1-6, 19, 21, and 22 are rejected under 35 U.S.C. 102(b) as being anticipated by Lawson (D420,206). Lawson discloses a hat that visually simulates a vehicle tire with a recess on one side for receiving a user's head. With respect to Claim 2, the hat is configured to visually simulate a tread portion and at least one sidewall portion of a real vehicle tire. With respect to Claim 3, the hat is configured to visually simulate a tread portion, sidewall portions, and through hole of a real vehicle tire. With respect to Claim 4, the through hole is configured to receive an upper portion of a user's head. With respect to Claim 5, the through hole is sized and shaped to fit the upper portion of a user's head. With respect to Claim 6, the through hole is sized and shaped to fit the upper portion of a user's head. With respect to Claim 19, the hat visually simulates a wheel. With respect to Claim 21, the hat is configured to visually simulate a vehicle tire mounted on a wheel on at least one side. With respect to Claim 22, the tire portion is mounted on a wheel portion.

Claim Rejections - 35 USC § 103

3. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person

having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

4. Claims 7-11 and 20 are rejected under 35 U.S.C. 103(a) as being unpatentable over Lawson (D420,206) in view of Cross et al. (5,708,983). Lawson essentially teaches the invention of the instant application, but as a Design Patent the disclosure is limited and therefore Cross has been relied on to teach what is well known in the novelty hat art. With respect to Claim 7, Cross discloses that a common feature of a novelty hat is a bright color scheme painted onto the hat member. With respect to Claims 8 and 9, Cross discloses that it is common for foam novelty hats to be contoured to fit over a user's head. With respect to Claim 10, Cross discloses the use of flexible vinyl to create a novelty hat. With respect to Claims 11 and 20, Cross discloses that it is well known to create novelty hats out of foam. It would have been obvious to one of ordinary skill in the novelty hat art at the time the invention was made to have used the teachings of Cross to make the hat of Lawson.

5. Claims 12-17 are rejected under 35 U.S.C. 103(a) as being unpatentable over Lawson (D420,206) in view of Cross et al. (5,708,983) as applied to claim 11 above, and further in view of Payne (6,052,830). Lawson in view of Cross essentially teaches the invention of Claim 12-15 and 17, but fails to teach an outer layer of fabric on the hat. Payne discloses a cover for a hat that provides a resilient outer layer of material that is removable from a hat and has a lower encircling seam through which a wearer passes their head. The cover further includes an overlap seam for contouring the cover to a wearer. The cover is secured with slide closures to a wearer. It would have been obvious to one of ordinary skill in the art to provide the hat as taught by Lawson in view of Cross with a cover disclosed by Payne to enhance the functionality of the hat.

Allowable Subject Matter

6. Claim 18 is objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

Conclusion

Any inquiry concerning this communication or earlier communications from the examiner should be directed to James G Smith whose telephone number is 703-605-4225. The examiner can normally be reached on 8:00-5:00, off every other Friday.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, John J Calvert can be reached on 703-305-1025. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

JGS
9/30/2004


JOHN J. CALVERT
SUPERVISORY PATENT EXAMINER
TECHNOLOGY CENTER 3700